

**CITY OF MORGAN HILL
JOINT REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – FEBRUARY 23, 2005**

CALL TO ORDER

Chairman/Mayor Kennedy called the special meeting to order at 7:03 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Carr, Grzan, Sellers, Tate and Chairperson/Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Chairman/Mayor Kennedy, David Reisenauer led the Pledge of Allegiance.

RECOGNITIONS

The presentation of a Certificate of Recognition to Jon Maxey and Jim Tarp in appreciation for the Community and Cultural Center Lighting Installation was deferred to March 2, 2005.

Police Corporal Rodney Reno introduced Gavilan College Art Professor Jane Edberg who painted a child friendly interview room at the Police facility. He indicated that Professor Edberg and Police Detective Shane Palsgrove spent over 340 hours of their own time putting together and painting the room. He indicated that an open house will be held in March 2005 for the Council to be able to view the interview room.

Mayor Kennedy presented a Certificate of Recognition to Artist Jane Edberg in appreciation for her outstanding artistic talents and volunteer spirit in painting a child friendly interview room at the Morgan Hill Police Department.

PRESENTATIONS

Dave Reisenauer presented the Morgan Hill Community Foundation's Annual Report for 2003-04 to the City Council. He indicated that this is the second year he is making a presentation and the Foundation's second year in existence. He presented highlights of the Foundation's second year. To date, the Foundation has donated approximately \$15,000 in 24 different grants to 19 different organizations. He stated that the Foundation has focused on a "Community Non Profit Forum," indicating that two such forums have been conducted. This year, there were over 40 health and human service non profit organizations from the area in attendance. He stated that this event was co-chaired by United Way of

Santa Clara County. There was focus on how the Foundation can help the non profits within the health and human service fields, one of six focus areas. He noted that last year, the Foundation focused on the arts and culture with a result in the formation of the Arts and Cultural Alliance. He stated that the community non profit forum is one that the Foundation is committed to and that it will continue to have these forums each year; bringing the non profit leaders in the community together to talk about common issues, concerns and opportunities for partnerships to better serve the community. He indicated that the Foundation established the Alliance this year based on what it heard from members in the community in terms of need. The Foundation has agreed to allow non profits to become alliances underneath its umbrella, either as a fiscal or program alliance. To date, the Foundation has four fiscal alliance/partners and one program alliance (the Arts & Cultural Program). He stated that the Foundation can provide various aspects of support to non profits or community based organizations. He said that the Foundation's goals for next year will focus on expanding the community forum, focusing on building stronger relationships. Another goal is to expand the Foundation's asset base; looking at different kinds of funds to be established for individuals to be able to donate and be recognized.

CITY COUNCIL SUBCOMMITTEE REPORTS

OTHER REPORTS

Council Member Tate indicated that last week, on consent calendar, the Council endorsed an upcoming mail in ballot measure. He indicated that there are two parts to the measure: 1) continue the existing \$33.66 parcel tax to support the operation of the library; and 2) a modest \$1 per month increase in the parcel tax that would allow the reopening of the library on Mondays and the restoration of some of the services eliminated. He said that it is important to get this measure passed, indicating that there is an effort underway to finance this campaign effort. He stated that a fundraiser event is to be held on March 6 at the Guglielmo Winery, 5-7:30 p.m.

City Manager Tewes said that everyone is concerned about economic development and reported that since January 2005, the City has licensed 120 new businesses in Morgan Hill. Many of these are construction businesses; home based businesses, or businesses with no fixed location. However 28 new businesses have moved into vacant space in the community. Today, the Regional Water Quality Control Board reached an agreement with Olin Corporation on how they are to proceed with the "northeasterly plume." He indicated that the Board has agreed that Olin Corporation will install certain monitoring wells with certain instruments to measure groundwater flow and test for perchlorate, an issue previously resisted by Olin Corporation. He stated that the Water District has agreed to pursue forensic analysis where it may be possible to determine the type of perchlorate and its original location. He said that the City is not pleased that it has to go through this fact finding process because it seems abundantly clear that the perchlorate that has contaminated Morgan Hill wells comes from Olin Corporation. Given that this is the process that the Water District has taken, today's news was relatively good news.

PUBLIC COMMENT

Chairman/Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Chris Cote indicated that it is his opinion that Morgan Hill and Gilroy are the most polluted cities in the nine-County Bay Area Air Quality Management District. He stated that he just left a California energy commission meeting at the Coyote Grange Hall where individuals were informed that Calpine Corporation is seeking an increase in the amount of emission allowed from their power plants. He said that this is relatively disappointing news as the southerly air flow pattern will send almost all of the emissions down to South County residents. He informed the Council that the City of Gilroy passed a wireless telecommunication ordinance a few years ago. This ordinance regulates where energy emitting, particularly radiation emitting devices (e.g., cell phone towers and micro wave repeaters), can and should be located. Specifically, the City of Gilroy did not want to see them located near homes and schools. In the two years since the enactment of this ordinance, there has not been one constructed close to homes and schools in Gilroy. However, in other County areas, such an ordinance is not in place. He said that the Pinnacle newspaper reported on a family that is experiencing difficulties today as a result of a wireless telecommunication facilities located near their home. He stated that Morgan Hill has an opportunity to emulate the City of Gilroy's wireless telecommunication ordinance. He noted that the ordinance exempts low power internet devices and provides clear provisions for the opportunity for companies to co locate their transmitter on transmission towers to avoid lack of services. He encouraged the Council to take a look at the ordinance he drafted for the City of Gilroy as it has worked well in this community. He noted that San Benito County took the City of Gilroy's ordinance and modified it for their purpose.

Steve Britton encouraged the Council to accept the wireless telecommunication ordinance. He stated that he fought the installation of a tower adjacent to his home four years ago and lost. Now, he has a cancer that cannot be explained. His wife also has a cancer tumor and his son suffers from migraine headaches. While he understands that he cannot prove the tower was the cause for his family's problem, his family was relatively healthy prior to its installation. He stated that he will continue his fight to have Santa Clara County accept/adopt the same ordinance as adopted by the City of Gilroy. He does not see a need to place towers close to residential homes when there are other options available. He understands that telecommunication companies want to save money by placing them close to power lines, but that he did not believe that it was worth the cost of human lives.

No further comments were offered.

City Manager Tewes indicated that Mr. Cote's request has been before the Council two previous times: the first time, the Council indicated that it did not want to spend a lot of staff time reviewing it; the second time, the Council referred the matter to the economic development committee after Mr. Cote recommended that the City adopt Gilroy's ordinance. He noted that this committee has been constituted as the Community and Economic Development Committee and that this matter will be placed on their upcoming agenda.

Mayor Kennedy indicated that he would be requesting that this be agendized for a future Council meeting following a report by the Community and Economic Development Committee.

Council Member Sellers indicated that as chair of the Community and Economic Development Committee, he would make sure that it is on the next agenda.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Vice-chairman Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 1-3 as follows:*

1. **JANUARY 2005 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT..**
Action: **Accepted** and **Filed** Report.
2. **PURCHASE AND SALE OF A BELOW MARKET RATE (BMR) PROPERTY**
Action: 1) **Authorized** the Executive Director to Negotiate, Prepare and Execute the Necessary Documents with World Savings Bank, or its Agent, in an Amount not to Exceed \$210,000; Subject to Review and Approval of Agency Counsel; 2) **Authorized** the Executive Director to Use up to \$10,000 to Complete any Necessary Repairs for the Unit and to Cover any Escrow Closing Cost; and 3) **Authorized** the Executive Director to do Everything Necessary and Appropriate to Prepare and Execute the Agreements Required to Sell the Unit to an Eligible BMR Buyer in an Amount not to Exceed \$220,000 in Accordance with Program Guidelines.
3. **HABITAT FOR HUMANITY – HOUSING PROJECT**
Action: **Approved** in Concept a Grant to Silicon Valley Habitat for Humanity, in an Amount not to exceed \$560,000, for the Construction of a Six-Unit Affordable Ownership Housing Project.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 4-8 as follows:*

4. **JANUARY 2005 CITY FINANCE & INVESTMENT REPORT**
Action: **Accepted** and **Filed** Report.
5. **TIME ESTABLISHED FOR CITY COUNCIL PUBLIC HEARINGS**
Action: **Amended** City Council Policy, CP-98-02, Relating to the Established Time for City Council Public Hearings to Reflect a 7:00 P.M. Public Hearing Time, Effective April 2005.
6. **APPROVAL OF RESOLUTION PROVIDING JOB TITLES AND COMPENSATION FOR TEMPORARY/SEASONAL JOBS – Resolution No. 5892**
Action: **Adopted** Resolution No. 5892 for Temporary/Seasonal Employees.
7. **SPECIAL CITY COUNCIL CLOSED SESSION MEETING MINUTES OF FEBRUARY 9, 2005**
Action: **Approved** the Minutes as Written.

8. **SPECIAL CITY COUNCIL MEETING MINUTES OF FEBRUARY 9, 2005**

Action: *Approved the Minutes as Written.*

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

Action: *On a motion by Vice-chairman/Mayor Pro Tempore Tate and seconded by Agency/Council Member Sellers, the Agency Board/City Council unanimously (5-0) **Approved** Consent Calendar Item 9 as follows:*

9. **SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF FEBRUARY 2, 2005**

Action: *Approved the Minutes as Written.*

City Council Action

PUBLIC HEARINGS:

10. **APPEAL OF RESIDENTIAL DEVELOPMENT CONTROL SYSTEM PROJECT EVALUATIONS – Resolution No. 5893**

Planning Manager Rowe presented the staff report, indicating that the Council is being asked to consider eight appeals of the Planning Commission's evaluation of proposed residential development under the City's residential development control system (Measure C). He indicated that on January 25, the Planning Commission concluded the project evaluation phase of this year's Measure C competition. Under the Measure C ordinance, applicants may appeal the Commission's evaluation of their projects' to the Council, and thus the subject of the Council's hearings this evening. He informed the Council that it may affirm or modify the allotment evaluation after conducting a hearing on the matter. He informed the Council that staff is recommending some point adjustments. He stated that the adjusted scores will be considered in the final project rankings and in the Planning Commission's decision in the award of Measure C building allotments. He stated that the Planning Commission is scheduled to make its final decision on March 1, the deadline imposed under Measure C for the award of building allotments for Fiscal Year 2006-07. He informed the Council that staff grouped multiple project scoring adjustment requests into four areas:

- 1) Ongoing project as listed under the Orderly and Contiguous Category. He indicated that staff is not recommending adjustment of point scores for the Dempsey or the Odishoo projects.
- 2) Providing 2 trees per lot frontage. He indicated that in order to be consistent with prior year's scoring the Council award the additional points to those projects that have committed to providing the two trees per lot (e.g., Odishoo, Dempsey, and the two Delco projects).

- 3) Preservation of significant trees under the Natural & Environmental Category. He said that projects that preserve a greater number of trees, or greater number of trees in proportion to the number of lots that are being proposed, receive the maximum two points. He said that Syncon Homes is preserving one tree and is asking for the maximum points because the tree is old (175-300 years old) and large. He indicated that the criteria does not give allowance to the fact that a tree happens to be an old tree and that this is proportionality question. With respect to the other two projects, they are committed to preserving more than one tree. However, the applications were incomplete as to whether the trees were significant or whether the trees were on the project site. Due to the insufficient information provided to arrive at a determination, staff did not recommend awarding points; noting that the Planning Commission concurred.
- 4) Overall project excellence under the Livable Communications category. He indicated that this is a point the Planning Commission awards based on a determination that a project is superior with respect to the overall layout. He informed the Council that the Planning Commission wanted the opportunity to acknowledge one or more projects that stood out from the others. He stated that in the past, the Planning Commission used different rating factors. This year, the Planning Commission agreed to award two points if a project received a super majority and that a majority vote would receive one point. He indicated that this was a change in methodology. Prior to this year's competition, staff advised the perspective applicants that the Planning Commission would be scoring this category differently. He indicated that it was difficult to achieve a super majority vote because there was a vacancy on the Planning Commission.

Planning Manager Rowe informed the Council that the Planning Commission has formed a Measure C subcommittee to review the evaluation criteria for the subsequent competition. He further addressed the individual project adjustment requests. He referred the Council to the San Pedro-Alcini project. He informed the Council that this project is requesting point adjustments in a couple of additional areas: 1) Schools category relating to a safe walking route to a high school. He indicated that the project is within 1.5 miles from Central High School. He stated that the Planning Commission discussed whether or not Central High School should be included as one of the high schools that the criteria was intended for. He said that it was the consensus of the Planning Commission that because it was a continuation school, with limited enrollment, it should not be counted as one of the School District's high school. However, in staff's review of the evaluation criteria, the criteria does not distinguish between a continuation high school and the School District's comprehensive high school such as Live Oak or Sobrato High Schools. While there is no guarantee that students from this project would be walking to Central High School, staff felt that the project should be given some consideration because a safe walking route exists. Further, there is correspondence from other School District staff higher up in the organization that acknowledges that the School District has three high schools, Central being one of the high schools. Staff recommends that the point score for this project be adjusted. Also, for this project, under the Livable Communities' category, there is one criteria listed that deals with providing a bicycle route or other improvements external to the project for up to two points. The appeal application included some information that was part of the original application that focused on the engineers estimate for offsite public improvements. This dollar figure can apply to four different categories as long as it translates to at least \$1,100 per point per unit. In closer review of the engineer's estimate, public works staff agrees that the project should be entitled to the full two points. Therefore, staff recommends the additional point as part of the Council's point adjustment.

Mayor Pro Tempore Tate recommended that the Council disclose exparte contacts. He indicated that he had exparte contacts with the following project proponents: San Pedro-Delco, Barrett-Syncon, Diana-Chan in person to person meetings with Ginger-Custom One via phone and with San Pedro-Alcini via e-mail.

Mayor Kennedy stated that he met with the project proponents for Diana-Chan, East Dunne-Dempsey, Barrett-Odishoo, and Barrett-Syncon.

Council Member Sellers disclosed that he met with the project proponents identified by Mayor Kennedy and Mayor Pro Tempore Tate, including Ginger-Custom One in the lobby this afternoon.

Council Member Carr also met with the same project proponents by phone, if not in person.

Council Member Grzan stated that he held one conversation with Council Member Sellers on the Central-Delco project.

Mayor Pro Tempore Tate noted that the criteria does not state that up to two points may be awarded for providing a safe walking route to the high school. He felt that this was an objective standard where a project receives two points or zero points. He noted that staff is recommending that one point be awarded. He inquired whether this was a good precedent to set.

Planning Manager Rowe indicated that Mayor Pro Tempore Tate's point was well taken as far as whether there is discretion to award 1 or 2 points. He noted that it is stated that you can award up to two points. The reason for recommending partial credit is due to the fact that other projects provided off site improvements to establish a safe walking route. This project would not have to install improvements between the two developments. He acknowledged that the criteria did not state up to two points may be awarded and that a safe walking route exists.

Mayor Pro Tempore Tate recommended that the Measure C subcommittee review this issue in terms of distinguishing that a project proponent has to do some work to receive up to two points.

Mayor Kennedy referred to the ongoing project issue, noting that the Dempsey and Odishoo projects believe that they should receive one point for being an on going project. He received information that staff awarded the point and that the planning commission changed the point score under this category.

Planning Manager Rowe stated that the Dempsey and Odishoo projects filed applications after receiving their allocations. Staff reviewed their current status. He noted that the criteria states that a project needs to proceed to an approved development schedule. He acknowledged that there is a development schedule issued with the projects who were awarded allocations in 2003. These projects were not in accordance with this particular schedule and were behind in this regard. He indicated that a formal development schedule is not approved until such time that the project proponent/applicant enters into a development agreement. He noted that neither of the projects has progressed to the point where a development agreement and development schedule have been approved. The Planning Commission agrees that the two projects are moving forward, but have not gone far enough into the entitlement

process to reach the threshold of an ongoing project according to the Measure C criteria. Therefore, the Planning Commission subtracted a point.

Council Member Grzan inquired whether the City differentiates between a heritage tree and a regular tree.

Planning Manager Rowe indicated that the City's significant tree ordinance defines a significant tree as an indigenous tree such as an oak tree. He said that it is the species and the size that determines whether a tree is of significance. It can also include a non indigenous tree such as the Monterey Pine that is very large.

Council Member Carr stated that he has always been confused by how points for overall project excellence are applied. He did not know what factors or standards are used by the Planning Commission to apply this standard.

Planning Manager Rowe indicated that this category is a subjective determination on the part of the Planning Commission with regards to which project stands out from the rest of the projects. He stated that project proponents/applicants are told there are two points that staff nor do the applicants have no control over. The Planning Commission felt that developers were following a recipe and developing the same type of project. He stated that the Planning Commission wanted to apply a criteria that would motivate developers to break out of the mold and design a project that individuals would take notice of.

Mayor Kennedy opened the public hearing.

John Telfer, South Country Realty, indicated that he represents six Measure C applications, three on appeal. He felt that many of the appeals could have been avoided. He felt that Planning Commission and staff have done an excellent job, giving the timeline constraints of issuing allocations by March 1. He said that there was not the usual opportunity to have additional public hearings that were held in the past. He requested that in the 2006 competition, the City start the process earlier in order to allow additional input by applicants to be able to argue and rebut issues that come through the process. He indicated that applicants did not receive the criteria for Measure C until July, at no fault of staff. He said that applicants like to submit for preliminary plan review and have interaction with the Planning Commission in order to be able to tweak projects and have projects better fit the criteria for that given year. He felt that there was a bias against R-2 products versus R-1 projects and that the Measure C criteria has been set up in such a way that it handicaps most R-2 projects. He stated that if you look at the same R-1 and R-2 projects that competed in 2002-03, and compare those to what they competed to this year, the R-1 projects improved their points on average approximately 8.2 points while the R-2 projects improved an average 1.6 points. He did not believe that there was an intent in Measure C to tilt the rules to give further advantage to R-1 projects. He requested that the Council and Planning Commission to take a look at the criteria to see if it needs to be fixed. He felt that one of the criteria that impacts R-2 projects is the landscaping tree issue. He was pleased to see that staff is recommending that 1 point be awarded to R-2 projects that competed this year. Another criteria that needs to be reviewed is the subjective "superior project" category. He distributed site plans for the Odishoo and Dempsey projects for the 2002-03 and the 2004-05 submittals, noting that they are both almost identical. He

noted that in the 2002-03 competition, they received superior project points while they did not receive points in 2004-05.

Warren Enos, one of the property owners for the San Pedro-Delco project, indicated that three property owners recently joined forces with Delco Builders to design a project for property located at the end of San Pedro Avenue. He said that land owners attended the January 18 Planning Commission meeting and that this was the first experience landowners had in becoming involved with city and planning affairs. As observers, he said that the three property owners have concluded that they are not sure that the Measure C allocation process is working effectively. Landowners left with the impression that the Commissioners lost sight of a strategic focus. They saw the process sometimes break down into a measure of micro management. It was also felt that along the way there was a departure from the objective point plan associated with Measure C. This gave rise to bias and a perception of unfairness. He requested that the Council go back and examine some of the outcomes because it was his belief that the Council would see a fair measure of inconsistencies. He recommended that the process be extended so that there would be more input in the decision making process. Further, that the Council review the process in order to eliminate inconsistencies.

Mayor Kennedy said that it was his understanding that staff is working on changes to the process.

Planning Manager Rowe noted that this is the first year in the implementation of Measure C. It was found that some things worked while others did not. He indicated that the Planning Commission has appointed a subcommittee who will begin work tomorrow in the review of the evaluation criteria.

Mayor Kennedy stated that the City will take comments into consideration and try to incorporate as many of those as possible. He encouraged individuals to submit specific suggestions to City staff.

Maureen Upton, representing the Diana-Chan project, appealed the point score under the “superior project” category. She noted that the Planning Commission has scored this project as superior in two prior competitions. While the project continues to have perfect scores in 8 out of 14 categories and nearly perfect scores in other areas, she requested that this project be awarded the superior project 2 points. She stated that this project has competed in the past 4 measure P competitions and has always been just out of the running by 1 or 2 points by ongoing projects that have the advantage in the competition, especially when there are not many allocations available. She said that this project has been improved since the last competition with the following: 1) 2-acre park includes amenities; 2) proposes a daycare/nursery school located adjacent to park; 3) the historic home and yard will be managed by the homeowners association as a meeting and special event area; 4) curvilinear streets, large lots, custom homes, diverse floor plans, production homes, BMR and moderate income homes that add interest to the project, and provides for great diversity in homes. She stated that finishing Bradford Way allows adjacent property owners’ children to walk to Nordstrom School and park in addition to the neighborhood being proposed. The finished path to Live Oak High School will allow children to walk safely from this project and all adjacent projects. The setback along Diana Avenue and the preservation of the vineyard located across the street adds to the landscaping. She informed the Council that the James Court and Murphy Avenue neighbors support this project and are happy with the single story custom homes to be sited behind their project, a change made after hearing their concerns following the first Measure P submittal. She indicated that this is a big project and that the dollars committed for

improvement to Morgan Hill are significant. She felt that this is the kind of infill project Morgan Hill wants.

Planning Manager clarified that in the last competition, this project received a point. This year, the project received a total of two votes and therefore, did not receive any points under the “superior project” rating criteria.

Alexander Hansen, representing Noel Odishoo, applauded the efforts of the Planning Commission. He said that the question on the criteria of an “on going project” is how to score this project compared to all other projects that do not have allocation. Instead, of comparing this project to those projects that do not have any allocations at all, the Planning Commission compared this project to those that were already under construction because they were granted allocations the prior year. He noted that one of the criteria for an ongoing project is that they adhere to a development schedule. He stated that this project received allotments in July 2004. The Planning Commission stated that they would be applying the criteria that states that a project has to have a development agreement or be under construction by September 2004. He acknowledged that the project proponent could not and did not do so, but that the development schedule stated that they had to have various applications, including the application for the development agreement on file by September 1. He noted that this application was submitted by September 1. It was found that this was not enough based on the criteria adopted because it was adopted for other portions of the allotment that received allotments the prior year. He stated that the Odishoo and Dempsey projects were caught because they were part of a supplemental allocation. He argued that because of the differences in time, that treatment was unfair. With regards to the tree, the other aspect to his appeal, he noted that staff agrees with the appeal. He noted that two trees per lot were part of the last Measure P submittal and received the extra point. Two trees were also proposed per lot in this Measure C submittal and did not receive points because staff did not believe that 2 trees per lot could be developed. The Planning Commission concurred with staff’s evaluation and therefore the project did not receive the point. He felt that the project met the criteria

Gary Walton, applicant for the Ginger-Custom One project, stated that there are four points under question. He felt that the staff report included in the Council’s packet was inaccurate. He noted that staff reduced his project points by four points and not the three as stated in the staff report. He stated that staff reduced 1 point under the Orderly & Contiguous category and 3 points under public works. He noted that staff has indicated that the turn around provided in a dead end street does not meet City standard A-21 because the turn around is not located at the end of the street. If you read the standard, he said that it states that it is a minimum of 30 feet from the end of the street. He felt that his project complies with this standard; noting that the turn around is approximately 140 feet from the end of the street. He said that you need to have an area where a fire truck can back out. Staff included a new argument that was not included as part of the planning commission staff report. He indicated that staff has a problem with the word “temporary” because they have no idea when the adjacent property would develop. He stated that the standard does not include a definition for the term “temporary.” He noted that there was at least 1 project that proposed a dead end street that, received a full point, and did not receive a reduction of 3 points. He said that there was at least one Planning Commissioner who did not understand why this project was losing points for following a City standard. He felt that having clear and precise standards are important to the development community. He felt that incorporating personal

opinions and prejudices into the system jeopardizes the whole credibility of Measure C. He felt that he complied with the standards and that staff was not willing to accept this.

Planning Manager Rowe said that when this project was reviewed by public safety staff, they had significant concerns with the dead end street based on the unknown of when the street may eventually connect through and provide a second access. While the proposed hammerhead is designed according to standard detail A-21, it is not positioned at the end of the street, but midway along the street. The issue with public safety staff is that there may be a vehicle in the driveway of the residence that may eliminate part of the hammerhead movement. He noted that the dead end would not accommodate a fire apparatus and does not facilitate police patrol.

Cray Miutl addressed two issues relating to the Barrett-Syncon Homes project. He felt that the oak tree is a significant element to Morgan Hill and that there is a certain aesthetics quality to a large oak tree. It is also felt that the oak tree should receive 2 points from a proportionality stand point. He said that he was able to find a 17-year old study on Live Oaks and California Oaks sponsored by the University of California at Berkeley and the California Department of Forestry/Fire Protection. He said that the study studied California Oaks in three counties. He reviewed the methodology applied in the study and calculated the volume of the tree and summarized his findings. He noted that his tree is almost 13 times the size of the volume of a 21 inch tree and therefore is considered significant. Based on this calculation, this project is saving 13 trees as opposed to 1 tree that is 21 inch in diameter based on the size of this particular tree. Based on proportionality, the project should receive more points because it is a larger tree. While he felt that the Planning Commission and staff did an excellent job in its review of the project, he felt that the results were skewed. Unfortunately, the death of Planning Commissioner Engels biased the project. He felt that this project was unfairly penalized in this particular instance. In this case, had Commissioner Engels been alive, the project could have received this point. He requested 2 points be awarded to this project for being a superior project.

No further comments being offered, the public hearing was closed.

Mayor Kennedy referred to the Syncon project, noting that the site has a historical oak tree. He inquired as to the process in point scoring on this project as it does not appear that the significant oak tree received any specific points.

Planning Manager Rowe said that the way the criteria is written, it states that “each building site preserves significant trees as defined by the ordinance. The number of trees preserved must be proportional to the project size and the number of existing trees.” He said that if a project does not preserve trees and it is possible to preserve the trees, a project loses points. If there are no trees on the site, a project does not receive any points. If a project has trees and preserves them, the project can receive up to 2 points. He informed the Council that the issue of proportionality was applied. He noted that there were projects in the competition that preserved a greater number of significant trees and proposed fewer lots that received the maximum 2 points. This project is preserving a single large old tree in a 52-lot project, compared to other projects that have more trees with fewer lots. He informed the City Council that the Planning Commission will be reviewing this criteria and try to define it better.

Council Member Sellers noted that the criteria referred to by staff does not dictate that it be 1 point for 1 tree, or 2 points for 2 trees, but that staff referred to a proportionality of trees to the site. In listening to the argument, he felt that it was more quantifiable. He felt that the City has the latitude to award additional points if it is determined that the tree is of significance.

Mayor Kennedy recommended that the Council review each of the four multiple project scoring adjustment paragraphs, walking through each and reach consensus, item by item.

Points for On-Going Projects

Planning Manager Rowe said that this item applies to two projects: Barrett-Odishoo and East Dunne-Dempsey projects. Their positions are that they received their allotments late and do not believe that they should be penalized for the fact that they are not on schedule. Staff does not believe that the criteria makes accommodations for late allocations. While the Odishoo application did file applications for subdivision, site review and development agreements in September, the applications were deemed incomplete at that time and remain incomplete for processing. Staff reports no progress on this project since September. The Dempsey project proponents continue to process their applications.

Mayor Pro Tempore Tate felt that the City would have defined a project that received allocations as a continuing project, noting that the Council did not define it as such. The Council defined a continuing project as a project that has made progress. Therefore, he felt that this is a clear definition.

Planning Manager Rowe informed the Council that when the City makes an award of allocation, project proponents who receive allocations are sent a letter informing them of their application filing schedule. He said that September 30 is the cut off point that the Planning Commission uses and reviews all submittals to that point. He said that the Odishoo and Dempsey projects were awarded allocations well after the September 30 date; being awarded allocations the following April. Therefore, these two projects were already behind schedule out of the gate. The City refines the schedule when a development agreement is entered into, and that a project would follow this schedule thereafter. He said that the City is processing a development agreement application for the Dempsey project, but that it has not been approved by the Council. Therefore, a development schedule has yet to be approved for this project. He felt that it was premature to make a determination as to whether these projects are in compliance as the applications are incomplete for processing, and that there has been no response to staff's letter requesting that they complete their applications in order to move forward with the projects.

Mayor Kennedy felt that the goal of awarding allocations to ongoing projects is to help them get completed. He felt that this appears to be a technical reason for denying the points. By not awarding these points, he felt that these two projects risk falling into the same problem experienced in the past with other projects.

Planning Manager Rowe said that once these projects complete the application process and get the development schedules in place, they would be in compliance. Therefore, in subsequent competitions, the two projects would be eligible for points. He concurred with Mayor Kennedy that the criteria was intended to allow these projects to eventually be completed, but that it is also to reward them for moving with due diligence and keeping projects on track. In one case, staff questions whether it is appropriate to

consider a project as ongoing because the applications are incomplete. In the other case, the Planning Commission believes that it was too early to reward the project with additional allocations. The Planning Commission did acknowledge that the projects received late supplemental allocations, but that staff advised the applicants' representatives prior to the competition that staff would not be treating them as ongoing projects.

Council Member Carr felt that this was a unique scenario that was established by actions taken by the Council, awarding additional allocations; assuming the passage of Measure C. Measure C did afford the opportunity to have additional allocations. The Council further stipulated that the allocations would go to these two projects. Therefore, the timeline is different for these two projects as a result of this action. He stated that he was struggling with holding the projects to a timeline and criteria that was established, resulting in the projects not fitting because of action taken by the Council.

Mayor Pro Tempore Tate did not agree that this is the only instance where this situation could occur. He said that there is a potential for a project to fall behind schedule and that additional supplemental allocations could be awarded from defaulted allocations. He did not believe that an ongoing project is ongoing until they start; noting that these projects have not started. He indicated that these two projects would be ongoing projects as soon as they start and would be eligible for the extra points in future competitions to keep them on track and ongoing. He did not believe that the definition for an ongoing project is a project that has been allocated, but a project that is moving forward with the development agreement schedule. He stated his support of the definition that a project is not considered ongoing until the project has moved forward.

Mayor Kennedy noted that it is staff's recommendation that the Council affirm the Planning Commission's scoring of these two projects which would not include additional points. He inquired whether any council members disagreed with this recommendation.

Council Members Carr and Sellers and Mayor Kennedy stated that they disagreed with the Planning Commission's recommendation.

Council Member Sellers agreed that the Council should stay with the intent of the goal and not get too technical.

Council Member Grzan noted that the intent of the process was to develop a quantifiable scoring process that allocated points to move projects up, according to the points, into a process. He stated that he would have a problem allowing for subjectivity to enter into the evaluation process. Should this occur, the Council would create an opening through the entire process. He felt that this may be harmful, in the overall affect, if you allow for subjectivity here; the Council would need to allow for subjectivity in other categories, deteriorating the process. He noted that it is being recommended that the Council hold the line in this area. If not held, he did not know how the line should be held. He recommended that the Council follow the guidelines.

Mayor Kennedy stated that it was his belief that it is the Council's role to look at things from a higher level and not get into the minutia, although it may be a more subjective action on the part of the Council. When an appeal is made, the Council is in the role of a judge and needs to look at the law, the facts and

try to avoid splitting a project. He felt that the Council needs to look at the bigger picture. Thus, his support for awarding the additional point to the two projects. He recommended that the Council take a vote on each of the four issues separately.

Action: *Council Member Sellers made a motion, seconded by Council Member Carr, to award one additional point to the Odishoo and Dempsey projects.*

Council Member Grzan stated that he would support the motion, but requested that the Council be cautious on how it proceeds because it is the intent to have a point driven system and to have integrity within the process. He recommended that the Council be as objective as possible in the scoring, criteria, and the rules that it sets so that everyone understands that they are all in a level playing field.

Mayor Kennedy noted that Council Member Carr pointed out that this situation is a one time situation as a result of an action taken by the Council.

Council Member Carr felt that this situation is occurring because of a scenario established by the Council. He was not stating that this situation could not happen again in the future such as when a project drops out in their allocations. He felt that the Council will know how to better handle the situation in the future. He felt that this situation was set up by the Council's action taken last year and felt that the Council should follow through with its action.

Council Member Grzan noted that the City has a point scoring system where a superior vote can achieve two additional points. He said that the Council will have all kinds of extenuating circumstances in a number of different areas. Should the Council grant this point, the Council is stating that it would vary from its decision making process based upon extraordinary/extraneous situation.

Vote: *The motion carried 4-1 with Mayor Pro Tempore Tate voting no.*

Points for Providing Two Trees Per Residential Lot

Planning Manager Rowe recommended that one additional point be awarded to the Odishoo, Dempsey and the two Delco projects for the commitment.

Council Member Sellers noted that staff recommended action states that "Staff will advise perspective applicants that staff will only award the 2 points to projects that provide standard 60-foot wide lots." He felt that staff was stating that because of the ambiguity this year, staff would allow the additional point. However, staff would be clearer in subsequent years on how the two points were to be achieved. He inquired how this section would be interpreted for R-2 projects.

Planning Manager Rowe noted that Mr. Telfer was suggesting that this is an example where an evaluation criteria favors an R-1 project over an R-2 project. He said that the City could look at alternative ways for all R-2 projects to earn the same points. Should the Council concur with this alternative, the Planning Commission subcommittee could consider this.

Action: *Council Member Sellers made a motion, seconded by Mayor Pro Tempore Tate, to **award** an additional point to the following projects: Odishoo, Dempsey, and the two Delco projects. Further that the Planning Commission look at alternative ways for R-2 projects to earn similar points.*

Council Member Carr stated his support of the motion, but expressed concern that the 60 foot wide lot reference is rigid. As the Measure C subcommittee looks at changes for subsequent competitions, it was his hope that they return to the Council with an ability to have flexibility for R-2 projects and the ability to do creative things within these projects.

Vote: *The motion carried 5-0.*

Preserving Significant Trees

Planning Manager Rowe said that staff noted that the two Delco and the San Pedro-Alcini projects committed in their narratives to preserve all trees on site. However, the applications did not indicate whether the trees were significant. Although the Delco project referenced a tree in the adjoining project that was previously preserved, it does not apply to this project. Therefore, there was insufficient information in the application for staff to make a determination, and that site visits were not able to resolve the question. He noted that there has been discussion about the Syncon Homes having one large tree where the project proponent is requesting two additional points. He clarified that there is a proportionality that is used based on the number of trees versus the number of lots. The applicant is arguing that using the mass of the tree is proportional to other typically sized trees, and therefore believes that he meets the proportionality test.

Council Member Grzan noted that there is nothing contained in the criteria that allows for additional points for a significant tree.

Council Member Sellers felt that the criteria talks about the significance of a tree. Further, that the Planning Commission and staff used a proportionality test as a guideline. He felt that the City is better off preserving a large significant oak tree versus a couple of pine trees.

Mayor Pro Tempore Tate felt that the criterion contains two statements: 1) how many trees according to lots, and 2) how many trees according to the number of trees. The criteria applies to 100% of the significant trees.

Planning Manager Rowe felt that the more trees on a piece of land the more accommodations you have to make in the site plan to preserve the trees. Projects are awarded for this effort. He noted that the Syncon Homes' project received 1 point.

Mayor Kennedy felt that there were two issues associated with the Central-Delco and Alcini projects. He noted that staff is recommending that the Council affirm the Planning Commission's score of zero.

Action: *It was the consensus of the City Council to **support** staff's recommended action with regards to the Delco and Alcini projects.*

Action: *Council Member Sellers made a motion, seconded by Mayor Kennedy, to **award** an additional point to Syncon Homes. Further, that the Planning Commission give clarification as to the proportionality issue with the understanding that if a project has a large beautiful significant tree that they be accommodated with more specificity.*

Mayor Pro Tempore Tate noted that Syncon Homes is only preserving one tree for the number of lots being proposed. He said that there is not a significant amount of effort per lot to preserve several trees. He felt that this is one criteria that you need to have the opportunity to meet; noting that this criteria has always been in place.

Council Member Carr stated that this criteria is similar to “distance from the core” as an opportunity point for some properties. He said that this is a difficult issue to struggle with. He acknowledged that the tree should be preserved. He noted that the criteria states that the number of trees preserved for a project must be proportional to project size. He felt that this is a criteria that needs work for future competition. He wanted to make sure that the criteria is applied fairly and evenly to all projects.

Mayor Kennedy said that if he does not support the additional point, it is as though he does not support preserving a 300 years old, 30 foot diameter oak tree.

Vote: *The motion carried 3-2 as follows: Ayes: Grzan, Kennedy, Sellers; Noes: Carr, Tate.*

Overall Project Excellence

Planning Manager Rowe said that this is up to a 2 point category that the Planning Commission awards for a superior project: 1 point is awarded based on a majority vote, and 2 points is awarded based on a super majority vote of the Commission. With respect to the issue of the vacant Commission seat, he indicated that there was a situation a year ago where a Commissioner had to abstain. This resulted in the same voting membership in both years of competition. There was also a significant change in the way to which points were determined this year compared to last year.

Mayor Pro Tempore Tate said that he understood the explanation that the City changed the criteria and that there were a lot of appeals based on the fact that projects were superior last year and were not considered superior this year. He stated that he was not comfortable with the number of votes as being the determining factor of a superior project rating. This may be something that the Council would like the Commission to review in terms of how points are awarded. This would result in changing the criteria again and may result in projects endangering themselves to having an inconsistent score between this competition and the next competition. He would like the City to get to the point where it is consistent criteria to criteria; and year to year.

Mayor Kennedy stated his concurrence with Mayor Pro Tempore Tate on this point. He felt that this is an area that the Council is relying on the Planning Commission; giving them the leeway to award these points. He stated that he would like to have the Planning Commission retain the leeway to make the decision and not interfere with the process on this particular issue. He noted that the Planning

Commission has made some changes and that it was his understanding that they would continue with this same criteria for this particular category.

Council Member Carr inquired whether a project was competing against other projects or is a project competing against itself under the overall project excellence category.

Planning Manager Rowe responded that a project is competing against itself and can receive up to 2 points. In order to be fair, the Planning Commission needs to look at all projects to determine why they are awarding 1-2 points.

Council Member Carr said that assuming a project is competing against itself; he did not understand why a project drops in its superior status from one competition to the next.

Planning Manager Rowe said that a Planning Commission appointed a subcommittee who reviewed the scoring process. The subcommittee found areas in need of changes. He stated that the Planning Commission, as a whole, did not instruct the subcommittee to look at changes to the project excellence area. Therefore, the scoring criteria will remain the same for the next competition unless there is input from the Council this evening to do so. He indicated that Commissioner Engels voted a year ago and Commissioner Escobar had to abstain last year. He noted that Commissioner Escobar scored the projects this year and there was a vacancy on the Planning Commission. Therefore, there was a slight difference in the make up of the voting membership. There was also a change in the methodology by the Planning Commission as they used five different rating factors to determine which project(s) should be rated superior. This year, the Commission felt that it was too complicated. If it was decided that each Commissioner would review each of the 24 projects, identifying which they believed were superior.

Planning Commissioner Ralph Lyle commented on the scoring conducted under this category last time. He said that the Planning Commission set up a list of items that each should look at in scoring a project for excellence. A weight was applied to it, resulting in an overall number. Each Commissioner would come up with a number for each project. In this process, there were no projects graded as being superior on a standard grading scale. The project received superior points because they happened to be the highest score across the competition. Overall, there was a lot of confusion and indicated that some Commissioners did not understand the weight. Therefore, there was a wide disparity in scores. When you averaged the score, it was not clear how it was working. The subcommittee decided that a simpler process was needed. It was decided to look at each project to determine whether it was considered to be a superior project. This year, there was a preponderance of Commissioners who believed that a project was superior. He indicated that this year's process was scored different from last year. For future years, he recommended the criteria be relatively consistent.

Planning Commissioner Joe Mueller said that this was a technically complicated scoring process last year. He felt that projects were scored as each project was reviewed and not relatively to the other projects. He stated that projects may not be the same from year to year. It may be that minor changes may affect the way the Commission viewed the project. If a project does not change from one year to the next, it was his belief that the point raised by Council Member Carr comes into play. He agreed that this category is meant to be a subjective scoring by the Planning Commission because it was felt that all projects were becoming "cookie cutter" projects with everyone doing the same thing. He did not believe

that this is what the City wants; it wants creativity and unique neighborhoods in the community. It was his belief that the scoring was becoming too objective and that the City was not seeing creative projects; thus, the need for the subjective score.

Council Member Grzan noted that one of the issues raised was that the make up of the Planning Commission shifted. Therefore, the make up of the voting can change based upon a project.

Mayor Kennedy noted that the recommended action is no scoring adjustments to be made for the overall project excellence category.

Council Member Sellers recommended that this be divided into two different parts. He noted that the Odishoo and Syncon projects believe that they should have received additional points. He expressed concern that developers were caught in the ambiguity of changing how you receive points under the project excellence category. He stated that he understood that it was a different criteria, but felt that this was a subjective process. He said that it is hard for him to understand how a project can be scored superior one year and not the next year. He felt that the Planning Commission is trying to apply an objective application to a subjective criteria. He did not believe that this was the best way to allow for creativity and recommended that additional thought be given on how to best do this. He agreed that projects are becoming cookie cutter projects. He was not sure whether given additional subjectivity to the process would be addressing this concern and may be undermining some of the other things the Council is trying to achieve. He felt that the City has been fortunate to have a stable, consistent Planning Commission. However, he did not believe that this would always be the case. For consistency sake, he stated that he was leaning toward giving the points to those projects that received them before, but not to the other projects. He felt that projects receiving superior points last year were caught in an ambiguous area where they had a criteria in one year and a different one the next. Further, that developers came in with expectations. He felt that the integrity of the process dictates that the City be consistent in the scoring process.

Mayor Pro Tempore Tate felt that an argument could be made that if a project was not in the previous competition, they could have received a superior score. He felt that Council Member Sellers may be opening up a situation.

Planning Manager Rowe indicated that project proponents were advised prior to the competition that projects would be scored subjectively under this category going into the process.

Council Member Carr appreciated the goal of what this category was trying to achieve (e.g., uniqueness in character). He indicated that he struggled with this category as well last year. He did not believe that the City has a way to apply this category and did not know if it is meeting the goals of the Council or that of the community. He agreed that a project that was scored superior one year should be scored superior the following year unless there were changes made that degrades the project. He would support granting 2 points to the two projects who received them last year. He did not believe that a project is to be scored against another project under this criteria.

Council Member Grzan said that there may be a new criteria applied next year with new constraints/opportunities for projects. He felt that a project needs to return and prove that it is still a

superior one. If a developer wants to submit the same project the following competition, the project is not guaranteed the same points or the same rating.

Council Member Carr felt that if a project scores well in any other category in Measure C, it would be the idea to make sure that the project remains the same in the next competition so that a project is scored the same. Further, to update a project based on modified criteria. Under this category, the City/developer would be looking at the Planning Commission and be forced to dramatically change a project. He was not sure that this is what this category is supposed to do.

Council Member Grzan said that this Council could change as well. He said that the Council has the opportunity to make changes and that the changes are not guaranteed in following years. He stated that what one council does is not binding to the next Council unless defined by law.

Action: *Mayor Pro Tempore Tate made a motion, seconded by Mayor Kennedy, to **make no scoring adjustments** under this category. The motion carried 3-2 as follows: Grzan, Kennedy, Tate; Noes: Carr, Sellers.*

Individual Point Adjustment Requests

Planning Manager Rowe indicated that staff recommends an additional point for the San Pedro-Alcini project for being within the prescribed walking distance to Central High School and one additional point for the bicycle route improvement path based on the clarification of the engineer's estimate (1 additional point under the Schools and 1 additional point under Liveable Communities categories).

Mayor Pro Tempore Tate expressed concern that a precedent would be set because you can receive up to two points and it is being recommended that 1 point be awarded. He did not believe that the criteria stipulates that a project has to construct a safe walking route. The criteria states that 2 points are awarded if the safe walking route is in place. Should the Council decide that Central High School qualifies as a high school, he felt that 2 points needs to be awarded. He agreed with staff's recommendation that the subcommittee look at this criteria and be able to give up to 2 points. However, he did not believe that the criteria reads as such at this time.

Council Member Sellers concurred with Mayor Pro Tempore Tate's recommendation of awarding 2 points for a safe walking route to Central High School for the San Pedro-Alcini Project. However, he would like to address the turn around issue raised by Mr. Walton.

Action: *Mayor Pro Tempore Tate made a motion, seconded by Council Member Sellers, to **award 2 additional points** to the Alcini project for providing a safe walking route to Central High School.*

Planning Manager Rowe informed the Council that the Planning Commission felt that a continuation school, unlike comprehensive schools, does not have an open enrollment. Therefore, there is no guarantee that high school age students from the project would walk to Central High School.

Council Member Carr stated that he agreed with the Planning Commission's position with respect to this issue. However, he inquired whether the City could consider the uncertainty of high school age students attending Central High School. He did not believe that the safe walking route affects Central High School or other schools, and did not know whether he could take this under consideration.

Planning Manager Rowe indicated that the School District and the Planning Commission only looked at the two comprehensive high schools in the application of a safe walking route category. He informed the Council that the applicant provided correspondence from other district staff who considers Central High School as a high school, although a different type of a high school. When staff looked more closely at the evaluation criteria, it was noted that there was no distinction between the comprehensive high school and the continuation high school. Therefore, it is staff's belief that the benefit should go to the applicant. He indicated that the Planning Commission subcommittee will be looking at this category. This is a two point item, not an up to 2 points.

Council Member Grzan felt that a safe walking route assumes that it is a neighborhood school. He did not believe that Central High School was a neighborhood school, per se. He did not know why the project is offering to install a neighborhood access point as there is not a neighborhood that needs it.

Planning Manager Rowe indicated that the Planning Commission did not award points based on the fact that a neighborhood access to Central High School was needed. He concurred that this is not stated in the criteria. He clarified that the Planning Commission did not award any points under this category while staff is recommending 1 point be awarded.

Vote: *The motion to award 2 additional points for a safe walking to school route carried 3-2 as follows: Ayes: Kennedy, Sellers, Tate; Noes: Carr, Grzan.*

Planning Manager Rowe recommended that an additional point be awarded to the San Pedro-Alcini project for a maximum of 2 points based on the value for the offsite public improvements for the bicycle route proposed.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **awarded** 1 additional point, for a maximum 2 points based on the value for the offsite public improvements for the bicycle route proposed to the San Pedro-Alcini project.*

Planning Manager Rowe indicated that the Custom One project proposes to extend Ginger Way and Rose Lane and would result in a dead end road. He indicated that a hammerhead (3 point) turnout is proposed. He addressed the difficulty of using a driveway for a turn around access. He indicated that it is a long driveway to the garage located to the rear and that several vehicles could park in the driveway. If there is a car parked in the driveway, it would not be possible for the driveway to be used as a turnaround area. City details recommend that hammerheads be located within 30 feet of the end of the street. He stated that the location of the driveway apron does not meet the 30 feet minimum requirement. Public Works staff indicates that the improvements being proposed for the extension of Rose Lane is only a two-third street width. This results in a narrower street to try and negotiate a turn around. Therefore, it is felt that this design discourages access to some units. He said that turnarounds are

acceptable for temporary situations. However, he indicated that the California Salvage located to the south can continue for an indefinite period of time. Therefore, it may be a long time before the road continues through and provide a completed access to the neighbourhood.

Council Member Sellers noted that the Salvage yard property is zoned for residential use and felt that it could be conceivable that it develops in the near future. He said that the issue is “intent” and did not believe that the City could surmise the intent for future development.

Planning Manager Rowe indicated that the standards state that driveway approaches may be used as part of a temporary hammerhead, provided that they meet the dimensions for the template of the design. He said that the standard was envisioned as a temporary solution. He indicated that the template for this project states that the minimum width would need to be 20 feet. This project would provide 24-32 feet. Therefore, the project would have more than the minimum width along a section of the roadway to meet the template for the temporary hammerhead turnaround. He stated that the street proposed is considered a standard half street. He noted that some of the properties in the area are developed and that in order to be constructed as full street standards, it may require the City to acquire the right of way or through a commitment of a project who would agree to install the improvements.

Mayor Pro Tempore Tate indicated that a determination that the turnaround did not meet standard A-21 was based on the proposed location; noting that there is a minimum of 30 feet from the end of the street. He noted that a maximum is not indicated on the standard. He felt that the project proponent has a technical argument. He stated that he understands the public safety concern, but did not believe that the standard was violated. He said that the standard does not state that the hammerhead/turnaround has to be located at the end of the street.

Council Member Sellers suggested that it be requested that a “no parking” sign be placed in the driveway for further safety. He agreed that the criteria is straight forward, and felt that there were areas where you can increase safety and address the issue.

Council Member Carr stated that he was struggling as to where the design technically violated the standard.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **determined** that the hammerhead turnaround does not violate the standard and meets the standard requirements for design and construction; **awarded** 3 points under this category and 1 point under orderly and contiguous category for a total of 4 additional points. Further, requested that the applicant address the public safety issue by taking appropriate measures to adjust the design.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **concurred** with staff recommendation on the remaining items.*

Action: *Mayor Pro Tempore Tate made a motion, seconded by Council Member Sellers, to adopt amended Resolution No. 5893, amending sections 1-8 based on the consensus votes taken this evening. Staff to revise the Resolution accordingly.*

Council Member Sellers felt that the City Council is well over due for a joint meeting with the Planning Commission. He felt that this may be an issue that the Council can use to have the joint meeting. He said that he was struck by the comments as expressed by Mr. Enos. He expressed concern that the City may be getting too enamoured with the process and have lost some focus on what the City is trying to do. He felt that this is an outstanding community, largely because of the RDCS process. However, he was starting to feel more anxious about the process. He was pleased to hear that the Planning Commission would be convening a subcommittee who would be reviewing the standards and criteria. He felt that the Council should give the criteria broader discussion. He requested that the Council consider having a joint meeting with the Planning Commission, taking a higher view to make sure that the City is on the right track.

Mayor Pro Tempore Tate agreed with the comments expressed by Council Member Sellers. However, he felt that the City boxed itself in with a 16 month timeframe. He recommended that the Council look at backing off and figure out the appropriate timing.

Council Member Carr said that it has always been easy to state that the problems will be corrected with the next competition and have the subcommittee look at the problem areas. He did not believe that this would be easy to do with the change of two year competitions. He felt that the Council needs to solve the problems as they arise; looking at the RDCS competitions before they take place. He did not believe that the Council could wait for the subcommittee and a competition two years down the road to solve a problem(s) that exists today.

Council Member Grzan agreed with Council Member Sellers that the RDCS process is starting to become problematic in some respects. He felt that the point system is driving the process. He noted that the Council voted on certain items this evening because the criteria does not allow the Council to take a different action. He recommended that the Council step back and become value driven in the decision making process. Hopefully, this will give the Council flexibility, and yet keep the City on track to build the things needed.

Mayor Kennedy noted that this is a voter initiative and that there were reasons why the voters decided to include restraints on what the Council can and cannot do. As much as the Council needs to try and make Measure C work as best it can, he noted that it is an initiative.

Vote: *The motion carried unanimously (5-0).*

Redevelopment Agency Action

OTHER BUSINESS:

11. CASA DIANA MIXED-USE HOUSING PROJECT PREDEVELOPMENT LOAN

Bill Newkirk presented the staff report on the Casa Diana mixed use transit oriented project on a 2.8 acre site located between Dunne and Diana Avenues, along Railroad Avenue. The project is proposed at a density of approximately 28-units per acre. He indicated that 80 units and 3,500 square feet of commercial use are proposed for the site. He stated that the proposed project is part of a PUD that encompasses the entire block. He informed the Agency Board that EAH is requesting a \$50,000 predevelopment loan to reimburse it for a purchase deposit that has been released and is no longer refundable. He stated that staff is recommending Agency approval of the loan with a couple of provisions: 1) EAH to master plan the entire PUD site; 2) address concerns about design cohesion for the area next to the courthouse; 3) look at commercial uses that support the courthouse and the downtown and do not conflict with the downtown; 4) incorporate the existing businesses into the PUD design; and 5) an assignment right to the Agency so that the Agency can conclude the purchase and forgive the deposit to EAH in the event that they cannot finish the project. He informed the Agency Board that this is a complex project and that there are a number of items that have to be resolved. He said that the various income models provided by EAH have given the City a range of Agency assistance from \$3-\$7.5 million. He stated that staff is recommending Agency approval of the predevelopment loan at this time with the conditions identified in order to continue working on the project.

Chairman Kennedy opened the floor to public comment. No comments were offered.

Agency Member Sellers stated that he was anxious about having additional retail in this area. He said that by necessity, it would be courthouse serving. He felt that there may be retail opportunities within the courthouse facility itself. He was anxious that retail in this area would draw from the downtown. While the City needs low and very low income housing units, he felt that they have been disproportionately provided in this neighborhood. He stated that he would be more inclined to support a project that proposes moderate units and encompasses more of the community; a proportion that has not been met. He does not know whether retail is needed in this area. He stated that he would agree to approve the loan this evening because there was still a long way to go. He felt that it was vital for the Agency Board to define the uses so that staff knows what direction to take.

Chairman Kennedy said that some concerns have been raised about focusing all of the City's affordable housing in the downtown area and the need for mixed housing in the downtown. He recommended that mixed housing be looked at as part of this project; focusing on balancing the housing types for purchase as well as rental.

Mr. Newkirk indicated that the project is being proposed as an all rental housing project. He said that the plans are conceptual at this time and that there may be ways to break up the housing mix.

Mayor Kennedy stated that it would be his preference to make part of the project a purchase type of a project as a sense of ownership brings responsibility.

Executive Director Tewes indicated that the project sponsor may not have the same objectives as being articulated by the Agency Board. If for any reason the project cannot proceed, the City wants the ability to step in and move forward. He noted that EAH is a non profit housing organization that is established for certain purposes and that their purposes are as important to them as the City's downtown plan is to the City. He felt that the City needs to find a match.

Agency Member Carr was pleased to see that staff's recommendation includes the integration of existing businesses such as Mama Mias because the City does not want to do anything to damage what exists today.

Agency Member Grzan noted that the City is leaning toward low income or below market rate housing along the railroad tracks. He felt that mixed use of moderate housing rental units would be appropriate.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** the Concept for the Development of Casa Diana, a Transit-Oriented, Mixed-Use Housing-Commercial Project, incorporating Agency Members' comments.*

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Authorized** the Executive Director to do Everything Necessary and Appropriate to Negotiate, Execute, and Implement a Predevelopment Loan Agreement in the Amount of \$50,000 with EAH, Inc.; Subject to Review and Approval of Agency Counsel.*

12. PUBLIC ART AT THE MORGAN HILL TRAIN STATION

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the project before the Agency would commit \$50,000 in MTC grant funds for the Depot Street project to the Arts and Cultural Alliance (ACA) of Morgan Hill to create a bronze sculpture of Hiram Morgan Hill, his wife and daughter at the train depot. He informed the Agency Board that the total estimated cost is \$102,000 plus site preparation costs. He indicated that ACA is requesting that the City commit the MTC funds toward this project. Once the project is completed, that the City accept and maintain the statue, allowing placement of this art work at the train station, and that the City commit and advance \$52,000 plus the site preparation costs for the statue. He stated that the ACA will commit to fundraise these costs. However, in the event that they are unable to fundraise the \$52,000 plus site preparation costs, they are requesting that the City cover these costs; the City's contribution toward public art. Staff is recommending that the City agree to commit the \$50,000 MTC funds subject to ACA being able to fundraise the \$52,000 plus site preparation costs. Staff would allow a 12 month period for ACA to fundraise.

Chairman Kennedy recommended that the model sculpture be displayed at City Hall and at the Community & Cultural Center.

Chairman Kennedy opened the floor public comment.

Zoe Gustlin, Morgan Hill Community Foundation, informed the Council that she is the chair of the ACA at this time. She said that there was a long list of projects, but that it was felt that this sculpture was the best one to pick to start with for public art in Morgan Hill. She indicated that the art work would be a large structure and would have a huge presence in the town. The sculpture would bring a lot of benefit to the community, in its totality, as well as being a nice piece of art as rendered by the artist. The art will be

life size, made from bronze, will be a substantial piece of art, and will be placed at the train depot. As Depot Street improvements are made, it is felt that the sculpture will be a focal point of the improvements. She requested that the Agency approve the \$50,000 MTC grant as well as a \$52,000 loan in order to be able to complete and unveil the sculpture by the centennial. She informed the Council that ACA would be spending a lot of time fundraising to repay the \$52,000, if possible. There are plans to approach various groups to raise money as well as contacting businesses for donations. ACA will also be contacting Morgan Hill pioneer families to see if they would contribute funds in the name of their families toward the statute. She introduced Marlene Amerian, a local artist who has designed the sculpture, indicating that Ms. Amerian has given the ACA a great price for the art work.

Marlene Amerian addressed the Hiram Morgan Hill family sculpture model, indicating that the model represents approximately six weeks of work. She said that the sculpture will take 14 months of her time to complete. If approved this evening, she would start working on the sculpture right of way so that the art sculpture can be unveiled for the City's centennial. She informed the Agency Board that she would be donating her time to this project. The funding being requested is for out of pocket expenses to construct the art work. She agreed to donate the art work to the City if it is willing to accept it.

Harlan Warthen felt that the City is well on its way to becoming a real city as it will be entertaining public art. He noted that there is not a lot of art in Morgan Hill and the art that is here, does not reflect Morgan Hill's heritage. He encouraged the City to approve the art work of the family who started Morgan Hill as the City is getting a good deal on the art work.

No further comments were offered.

Chairman Kennedy stated that Guadalajara, Mexico has beautiful public art in its main plaza. He noted that this art piece is proposed to be placed in a main corridor, crossing the railroad tracks that connect to the courthouse and the downtown area. It was his hope that the art piece would be prominent in its location and would be a centerpiece along the walkway.

Agency Member Sellers agreed with Mr. Warthan in that the City has a beautiful piece of art work donated by the Garcia Family depicting El Toro as it appeared 150 years ago, and that this piece of art hangs in the City's Community & Cultural Center. He noted that the City does not have many opportunities for art that depicts Morgan Hill's history. He felt that it would be incumbent upon the City to perform the changes to Third Street that will make the location an explanod area. He recommended that the art work be tied into the area as it would be an incredible addition.

Action: *Agency Member Sellers made a motion, seconded by Agency Member Grzan, to **Commit** \$50,000 in Metropolitan Transportation Commission (MTC) "Transportation for Livable Communities" (TLC) Grant Funds to the Arts and Cultural Alliance of Morgan Hill (ACA) for a Bronze Sculpture Entitled "Waiting for the Train"; Contingent Upon the ACA Raising Matching Funds, in the Amount of \$52,000 Plus Site Preparation Costs, by March 1, 2006.*

Vice-chairman Tate inquired what would happen should the Foundation/ACA be unable to raise funds. He noted that staff's recommendation is such that the City would not provide funding if the ACA is

unable to raise all the money.

Chairman Kennedy indicated that he would help the ACA raise funds. He noted that the ACA is requesting a loan.

Agency Member Carr noted that the staff recommended action is not to provide the \$52,000 loan that the ACA is requesting.

Executive Director Tewes noted that other individuals have approached the City with great ideas, noting that the Council/Agency Board has not reviewed the other items in the budget that will be reduced in order to make room for some of the funding requests. He recommended that the Council approve the \$50,000 from the MTC grant that would be applied for this specific type of program. Further, the Council/Agency Board direct staff to include options for funding subsequent loans in the budget analysis.

Chairman Kennedy felt that the Agency should proceed with the loan as well this evening to provide ACA some assuery.

Agency Member Sellers said that he would only support the loan if additional reporting periods were included.

Chairman Kennedy recommended every six month interval reporting periods.

Agency Member Sellers indicated that the Agency Board could commit \$50,000 in MTC funding and that \$52,000 be incorporated into the budget process to be finalized by the end of June 2005. He inquired whether this recommended action would create a problem for ACA.

Representatives from ACA indicated that the recommended action would not pose a problem.

Agency Member Carr stated that this is an action that everyone wants to support. However, he would like to give staff the opportunity to go back and consider where the \$52,000 would come from in the tight budget if this amount cannot wait to go through the budget process. The Council could have the discussion about the funding source when staff returns with its recommendation. He noted that it was not too many meetings ago where the Council dished out the rest of the unallocated budget for these kinds of things. The Council knows that it would be having more of these kinds of request, noting that the Council has yet to fund IDI and other projects that will be coming before the Council/Agency Board. Before the City launches into another \$52,000 funding approval, he felt that Council/Agency Board needs to identify the funding source. He recommended that staff return with suggestions of funding sources before the money is spent. He acknowledges that the request is as a loan, but noted that funding is being requested upfront.

Chairman Kennedy stated his support of loaning the \$52,000 from the City's general fund reserves. It was his belief that raising \$52,000 is achievable and stated that he would be committed to assist with locating sponsorship and support in a variety of ways to help raise the funds.

Action: *Agency Members Sellers made a motion, seconded by Agency Member Grzan to **amend** the motion to approve the \$50,000 in MTC grant and that the \$52,000 would be in the form of a loan with the understanding that staff and ACA would more specifically identify sources for fund repayment, outlining a plan for achieving the repayment of the loan and working with Council/Agency members to help achieve this. The ACA is to report every six months as to the status of the project and fundraising efforts.*

Vice-chairman Tate agreed with Mr. Warthan that this is a proposal that the City has to assist in making it work. He said that he would agree to assist raising funds as well. He noted that the City has stated its support toward public art, but that the City has not committed to it. He felt that it was time that the City did something.

Agency Member Carr stated that it was his belief that all five Council/Agency Members are committed to assist in fundraising efforts.

Vote: *The motion carried unanimously (5-0).*

Executive Director Tewes informed the Agency Board that staff would return within a few weeks with a loan agreement and a draw schedule for its approval.

City Council Action

OTHER BUSINESS:

13. AMENDMENT OF ORDINANCE NO. 1616, NEW SERIES REGARDING THARALDSON PLANNED UNIT DEVELOPMENT (PUD)

Council Member Sellers recommended that this item be continued in order to allow the Community & Economic Development Committee (CEDC) the opportunity to study this item further. When the CDEC has something more definitive to report, it would return to the Council with its report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Continued** this item in order to give the Community & Economic Development Committee the opportunity to further study this item.*

14. CONSIDERATION OF COUNCIL'S 2005 GOALS

City Manager Tewes presented the staff report, stating that it has been the Council's practice to review a written statement of the policies and goals discussed following its annual retreat. He indicated that the items reflect his note taking at the Council's retreat and that the organization of the draft policies and goals were his and do not reflect the Council's order, in terms of priority. He requested that the Council review the draft statement of policies and goals to see whether they correctly reflect those identified by the Council, including timelines.

Council Member Grzan said that it was his recollection that there was consensus to develop a policy that integrates creeks and streams with development. He requested staff support in becoming a Charter City.

City Manager Tewes noted that the policy relating to the integration of creeks and streams with development is listed as the very last item.

Mayor Pro Tempore Tate did not believe that the study of becoming a charter city should be included in the Council's policies and goals. It was his belief that this would be a study to be conducted by Council Member Grzan and staff this year to see if it is to be considered a goal for the Council next year. He did not believe that the Council endorsed this item.

Council Member Sellers referred to the budget policy relating to the use of a portion of the general fund. He noted that the second sentence of the third policy reads: "The portion of General Fund reserves that is less than the targeted 25% level and more than the absolute lower limit of 10% may be used for investments for the potential of very high returns either through expanded tax base or reduced operating costs." He noted that the second goal states that "By December 2005, the Financial Policy Committee will develop recommendations for that period after the Sustainable Budget has been achieved, which would address the use of reserve amounts that might exceed the targeted 25% level."

City Manager Tewes said that there was Council discussion about what the City would do with the reserves that exceeds the 25% level after the point where the City reaches a balance. It was his recollection that the Council stated that it wanted to adopt policies on how the City might be able to use the reserves above the 25% level (e.g., expand services, etc.). He clarified that the use of the terms "save or gain" would be for high returns or reduced operating costs. He stated that these would return as part of the City Manager's Fiscal Year 2005-06 budget recommendation.

Council Member Sellers felt that the Council needs to be more specific on how it defines the use of these funds. He understood that the Council would have an opportunity to review these as part of the budget process.

Mayor Pro Tempore Tate referred to the City Budget section of the draft Policies and Goals for 2005. He stated that he would like to take this goal a step further. It was his belief that what the Council did agree to what the City Manager captured. He clarified that the reason for the year long conversation with the public is so that the City would get to a point in 2006 where the Council proceeds with some form of new revenue. Although this is a 2005 goal, the Council is building to achieve a goal in 2006. He felt that the goal, as presented, makes it sound as though the Council is just talking about new revenue and not how they will be achieved. He recommended that wording be added to state that the Council is adopting a strategy and that there would be discussions about it in the future. The language could state that in November 2006, the Council will take a ballot measure to the community, following a lot of education and interaction with the public to receive their input/buy in, on a plan to increase City revenues. He referred to the Organization for Public Policy section. He recommended that a statement be included that stipulates that the Council has not concluded its discussion about this goal. Further, that it be stated that by the end of the year, the Council will review its new approach to the five Council committees and whether they need to be tuned up and/or changed at that point in time (e.g., include a statement that

reads “to be reviewed”). He referred to the Civic Engagement section where the Mayor will be suggesting a process for building community consensus. It was his belief that the Council stated that it would not be using the term “visioning” because there would be too much confusion with the Vision plans in place today.

Mayor Kennedy stated that the term “vision” has become trite and that the term has been overused. He would like to identify a better name for the process. He said that this goal is for the community to buy into the process that involves the public setting goals for the community.

Mayor Pro Tempore Tate noted that the Council agreed to adopt a City ethics policy. He recommended that the Council include a goal to adopt an ethics policy and that it be rolled out to the Boards, Commissions, and City employees. The Council is to review the ethics policy throughout the year(s) to see if there are ways to augment and/or improve the policy over time.

Council Member Carr referred to the City Budget section. He noted that the Council talked about a policy for replenishing reserves should the City drop below the 25% level. He recommended that the Financial Policy Committee have discussion on how to replenish the reserves should the City fall below the 25% level. He recommended a goal be included that addresses City employees/staff. In a tough budget year, he wants to make sure that the Council has a goal of achieving successful positive contract negotiations and a conclusion to this end within this year. He would like the Council to find a way to be able to recognize and enhance the employees within the City, recognizing them for the great work they perform.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Directed** staff to incorporate the additions identified this evening. Staff to redraft and return with the 2005 Goals for Council approval.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

Acting City Attorney/Agency Counsel McClure announced that the Council would be adjourning to closed session regarding closed session item 2 as listed below. He indicated that the Council/Agency Board does not need to discuss closed session item 1 this evening.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

2.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority:	Government Code Section 54957.6
Agency Negotiators:	City Manager; Human Resources Director
Employee Organizations:	AFSCME Local 101 Morgan Hill Community Service Officers Association

OPPORTUNITY FOR PUBLIC COMMENT

Chairman/Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairman/Mayor Kennedy adjourned the meeting to Closed Session at 10:25 p.m.

RECONVENE

Chairman/Mayor Kennedy reconvened the meeting at 11:05 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 11:06 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, AGENCY SECRETARY/CITY CLERK